

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ANA TERESA RIVERA; HECTOR RIVERA
MELENDEZ; IVAN RIVERA MELENDEZ; RENE
RIVERA MELENDEZ; SAUL RIVERA
MELENDEZ

Plaintiffs,

v.

PUERTO RICO ELECTRIC POWER
AUTHORITY; ACE INSURANCE COMPANY;
ABC INSURANCE COMPANY

Defendants.

CIVIL NO. 16-2353(ADC)

PLAINTIFFS DEMAND
TRIAL BY JURY

AMENDED COMPLAINT

TO THE HONORABLE COURT:

Come now plaintiffs, through the undersigned attorneys, and respectfully allege and pray:

I. THE PARTIES

1) Plaintiff Ana Teresa Rivera is of legal age, widow of the late Gumersindo Rivera Meléndez, and the mother of plaintiffs Héctor, Iván, René and Saul Rivera Meléndez. Plaintiff Rivera is domiciled in the state of Ohio.

2) Plaintiff Héctor Rivera Meléndez is of legal age and one of the sons of the late Gumersindo Rivera Meléndez. Plaintiff Hector Rivera Meléndez is domiciled in the state of Minnesota.

3) Plaintiff Iván Rivera Meléndez is of legal age and one of the sons of the late Gumersindo Rivera Meléndez. Plaintiff Iván Rivera Meléndez is domiciled in the state of California.

4) Plaintiff René Rivera Meléndez is of legal age and one of the sons of the late Gumersindo Rivera Meléndez. Plaintiff René Rivera Meléndez is domiciled in the state of Ohio.

5) Plaintiff Saul Rivera Meléndez is of legal age and one of the sons of the late Gumersindo Rivera Meléndez. Plaintiff Saul Rivera Meléndez is domiciled in the state of Ohio.

6) The Puerto Rico Electric Power Authority (PREPA) is a public corporation organized under the laws of Puerto Rico with its principal place of business in this jurisdiction. PREPA is the state-owned monopoly charged with the duty of providing electric power service in Puerto Rico.

7) Upon information and belief, Ace Insurance Company, is an insurance carrier organized under the laws of Puerto Rico, having its principal place of business in this jurisdiction. At all times relevant herein, Ace Insurance Company had in full force and effect an insurance policy covering the legal liability of PREPA for the damages claimed herein.

8) ABC Insurance Company, designated as such because at the present plaintiffs are unaware of its correct name, is an insurance carrier organized under the laws of, and having its principal place of business in states other than Ohio, Minnesota or California.

At all times relevant herein, ABC Insurance Company had in full force and effect an insurance policy covering the legal liability of PREPA for the damages claimed herein.

II. JURISDICTION

9) This Honorable Court has subject-matter jurisdiction over the instant case pursuant to 28 U.S.C. section 1332(a)(1), because it is between citizens of different States and the amount in controversy is in excess of seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

III. THE FACTS

10) On July 26, 2015, the late Gumersindo Rivera Meléndez (Gumersindo), visited his cousin's farm in Orocovis, Puerto Rico to walk around the farm and pick up its produce. As day turned into night Gumersindo failed to return home.

11) A search effort was launched to locate Gumersindo to no avail, until July 30, 2015, when Gumersindo's body was found on the farm's premises laying close to an energized PREPA cable. Gumersindo died of electrocution with this cable.

IV. FIRST CAUSE OF ACTION AGAINST PREPA

12) PREPA, the state-owned monopoly that provides electric power service to the Island of Puerto Rico has a non-delegable duty to maintain its energized cables out of the ground to protect

the public from electrocution caused by an energized cable on the ground.

13) Without attempting to be all inclusive and/or comprehensive, defendant PREPA was negligent by, among other things:

- a) Failing to maintain its electric system allowing vines and limbs to grow on its utility pole in violation of the National Electric Safety Code;
- b) Failing to inspect its electric system to detect hazardous conditions, such as the energized cable that killed Gumersindo, and that was lying on the ground and blended with the indigenous vegetation;
- c) Allowing its utility pole to deteriorate without replacing it and high voltage conductors to bend towards the ground;
- d) Failing to remove from the ground its energy conductor and returning it to its utility pole where it properly belonged and where it did not represent a threat to life and limb.

**V. SECOND CAUSE OF ACTION AGAINST DEFENDANT
ACE INSURANCE COMPANY AS INSURER OF PREPA**

14) Pursuant to the laws of Puerto Rico, an insurer is jointly and severally liable with its insured for the latter's

negligence. Consequently, ACE Insurance Company is jointly and severally liable to plaintiffs for the damages claimed herein.

**VI. THIRD CAUSE OF ACTION AGAINST DEFENDANT ABC INSURANCE
COMPANY AS INSURER OF PREPA**

15) Pursuant to the laws of Puerto Rico, an insurer is jointly and severally liable with its insured for the latter's negligence. Consequently, ABC Insurance Company is jointly and severally liable to plaintiffs for the damages claimed herein.

**VII. FOURTH CAUSE OF ACTION FOR ANA TERESA RIVERA'S MENTAL
AND MORAL ANGUISH**

16) Plaintiff Ana Teresa Rivera had been married to the late Gumersindo for 52 years. As a couple, they raised their four children and were enjoying their life together as retirees.

17) When Gumersindo spoke with his wife on July 26, 2015, Ana Teresa never suspected that she would never talk to him again. After four agonizing days searching for her husband, Ana Teresa was finally confronted with the devastating news that Gumersindo had been electrocuted by a PREPA energized cable on his cousin's farm.

18) As a result of her husband's sudden, unexpected and tragic death Ana Teresa has suffered and continues to suffer great anguish, sadness, impotence, despair, distress and mental and moral anguish.

19) Ana Teresa's damages for her distress and mental and moral anguish are reasonably valued at not less than seven million dollars.

VIII. FIFTH CAUSE OF ACTION FOR HECTOR RIVERA MELENDEZ'
MENTAL AND MORAL ANGUISH

20) At the time of his father's disappearance, plaintiff Héctor Rivera Meléndez was at his home in Minnesota, where he received the news about it. By the time Héctor got to Puerto Rico, his father's body had been found. During the four days that the search lasted Héctor experienced uncertainty, anxiety, suffered great anguish, sadness, impotence, despair, and distress not knowing the whereabouts of his father and being unable to participate in his search.

21) Upon learning of his father's death, Héctor experienced frustration, great anguish, sadness, impotence, despair, and distress, not only because of the loss of his father, but also due to the circumstances of his death.

22) At the time of his death, Gumersindo enjoyed good health and there was no reason to believe that a short vacation trip to Puerto Rico would lead to his death. The unexpected, sudden and tragic loss of his father, after agonizing days searching for him, caused and continue to cause plaintiff Héctor Rivera Meléndez' distress, despair, anger, impotence and mental and moral anguish that are valued at not less than three million dollars.

**IX. SIXTH CAUSE OF ACTION FOR IVAN RIVERA MELENDEZ' MENTAL
AND MORAL ANGUISH**

23) At the time of his father's disappearance, plaintiff Iván Rivera Meléndez was at his home in California, where he received the news about it. Iván immediately boarded a plane to Puerto Rico to join the search for his father. During the four days that the search lasted Iván experienced anxiety, uncertainty suffered great anguish, sadness, impotence, despair, and distress about his inability to locate his father despite the long hours spent searching for him. Plaintiff, along with his brother Saúl, had the sad and unfortunate task of having to identify the remains of his father.

24) At the time of his death, Gumersindo enjoyed good health and there was no reason to believe that a short vacation trip to Puerto Rico would lead to his death. The unexpected, sudden and tragic loss of his father, after agonizing days searching for him, caused and continue to cause plaintiff Iván Rivera Meléndez' distress, despair, anger, impotence and mental and moral anguish that are valued at not less than three million dollars.

**X. SEVENTH CAUSE OF ACTION FOR RENE RIVERA MELENDEZ' MENTAL
AND MORAL ANGUISH**

25) At the time of his father's disappearance, plaintiff René Rivera Meléndez was at his home in Ohio, where he received

the news of his father's disappearance. Being in Ohio while other people were searching for his father in Puerto Rico caused René to feel anxiety, uncertainty despair and a sense of impotence because he was unable to help.

26) By the time René was able to travel to Puerto Rico his father's body had been already found. The unexpected, sudden and tragic loss of his father, after agonizing days searching for him, caused and continue to cause plaintiff René Rivera Meléndez' distress, despair, anger, impotence and mental and moral anguish that are valued at not less than three million dollars.

**XI. EIGHTH CAUSE OF ACTION FOR SAUL RIVERA MELENDEZ'S
MENTAL AND MORAL ANGUISH**

27) At the time of his father's disappearance, plaintiff Saúl Rivera Meléndez was at his home in Ohio, where he received the news about it. Saúl immediately boarded a plane to Puerto Rico to join the search for his father. During the four days that the search lasted, Saúl experienced anxiety, uncertainty suffered great anguish, sadness, impotence, despair, and distress about his inability to locate his father despite the long hours spent searching for him.

28) At the time of his death, Gumersindo enjoyed good health and there was no reason to believe that a short vacation trip to Puerto Rico would lead to his death. Saúl, along with his brother Ivan had the sad and unfortunate task of having to identify the

remains of his father. Saúl had the unpleasant and emotionally wrenching task of placing the remains of his father into a body bag for transport to the morgue. The unexpected, sudden and tragic loss of his father, after agonizing days searching for him, caused and continue to cause plaintiff Saúl Rivera Meléndez' distress, despair, anger, impotence and mental and moral anguish that are valued at not less than three million dollars.

XII. NINTH CAUSE OF ACTION FOR GUMERSINDO RIVERA MELENDEZ'
CONCIOUS PAIN, MENTAL AND MORAL ANGUISH

29) During the time that preceded his death, Gumersindo Rivera Meléndez consciously suffered excruciating pain, experienced deep and profound emotional distress and mental anguish at his impending death.

30) Under the laws of Puerto Rico, plaintiffs as legal heirs of Gumersindo Rivera Meléndez inherit his cause of action for the pain and suffering, mental and moral anguish and other suffering and damages that Gumersindo consciously experienced while he was dying from electrocution. These damages are valued at not less than two million dollars (\$2,000,000.00) for each plaintiff.

WHEREFORE, it is respectfully requested that this Honorable Court enter judgment for plaintiffs and against defendants, jointly and severally, for the relief demanded in the complaint, with imposition of attorneys' fees and costs.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 26th day of July 2016.

/s/ David W. Román
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